IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

OP.No. 6526 of 2000(B)

PETITIONER:

A.T.JOSE, S/O.THOMAS, AGED 58 YEARS,
ALAPATTU KUNNAL (H), KIYATHADIYOOR P.O.,
PALA. (RETD. SPECIAL GRADE PANCHAYAT SECRETARY,
KARUKACHAL PANCHAYAT)

BY ADV. SRI.M.R.RAJENDRAN NAIR
SRI.M.R.HARIRAJ
SMT.KAVITHA ANAND
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SMT.VINEETHA B.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY OF GOVERNMENT OF KERALA, LOCAL ADMINISTRATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.**

2. **THE DIRECTOR OF PANCHAYATH, PANCHAYATH DIRECTORATE, TRIVANDRUM.**

3. **THE ACCOUNTANT GENERAL KERALA, TRIVANDRUM.**

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN for R1 to R3

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.10926/2000 IN O.P.NO.6526/2000 B

DISMISSED

24/07/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER NO.G.O.(P) NO.369/90/FIN. DTD. 22/06/1990 ISSUED BY THE ADDITIONAL SECRETARY, GOVERNMENT OF INDIA.**

EXT.P2: **COPY OF THE ORDER NO.A.943/99 DTD. 13/12/1990 ISSUED BY THE TALUK PANCHAYATH OFFICER, MALLAPPALLY.**

EXT.P3: **COPY OF THE PAY FIXATION MEMO E1 188093 DTD. 30/07/1994 ISSUED BY THE TALUK PANCHAYAT OFFICER, PARAVUR.**

EXT.P4: **COPY OF THE ORDER NO.E1.145/95 DTD. 13/07/1995 ISSUED BY THE TALUKI PANCHAYAT OFFICER, PARAVUR.**

EXT.P5: **COPY OF THE ORDER NO.E2-11809/96 DTD. 20/01/1998 ISSUED BY THE DIRECTOR OF PANCHAYATS, KOTTAYAM.**

EXT.P6: **COPY OF THE REPRESENTATION DTD. 7/04/1998 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**

EXT.P7: **COPY OF THE LETTER DTD. 23/12/1999 ISSUED BY THE 1ST RESPONDENT.**

EXT.P8: **COPY OF THE JUDGMENT DTD. 17/01/1998 IN O.P.337/98 OF THIS HONOURABLE COURT.**

/TRUE COPY/

P.A. TO JUDGE

KSS

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.6526 OF 2000

Dated this the 24th day of July, 2007

JUDGMENT

While working as Head Clerk in the Panchayat Common Service, on 8.11.1978, the petitioner joined Government service as Executive Officer Grade II. On the strength of Ext.P1 Government Order, he exercised certain options and re-options, whereby, with effect from 1.7.1988, that is during the period he was in the Panchayat Common Service, he opted to the scale of pay of Rs.950-1590 and as a consequence, to the scale of Rs.1050-1830 in grades II and I respectively for Executive Officers in the Government. The competent authority acted on such options and issued Ext.P2. After a long lapse of time, that too, nearly an year after his retirement, Ext.P5 is issued by the Deputy Director of Panchayats relying on letter dated 9.9.1997 issued by the Local Fund Accounts Department, taking the view that the petitioner, having joined Government service, was not entitled to opt to the scale of pay of Rs.950-1590 of Head Clerk because, by that time, he had left the Panchayat Common

Service and joined the Government service. Such an objection could not have been raised with reference to the Panchayat Common Service to enable any re-fixation or recovery because the petitioner had left the Panchayat Common Service by that time. Not only that, by the time the impugned Ext.P5 was issued, the petitioner had retired and it would be wholly unreasonable and unjust to upset the detailed order of re-option granted as per Ext.P2. The resultant situation is that the emoluments available to the petitioner at the time of retirement and his placement at that time for the determination of his retiral benefits are not liable to be disturbed on the basis of any decision in the nature of that contained in Ext.P5.

For the aforesaid reasons, Ext.P5 and the consequential Ext.P7 are quashed. The writ petition is allowed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.6526 OF 2000

JUDGMENT

24TH JULY, 2007.

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